



STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:)		
)		
Graceia Voyles,)		
Complainant)		
)	CHARGE NO.:	1993 CA 0040
and)	EEOC NO.:	21B 922607
)	ALS NO.:	8971
Allied Van Lines, Inc.,)		
Respondent)		

RECOMMENDED ORDER AND DECISION

This matter came before me on April 5, 6, 9, 10 and 11, 2001 and May 7, 2001 for a public hearing on the complaint filed by the Illinois Department of Human Rights on behalf of Complainant on August 9, 1995. The post-hearing briefs and replies of both parties were duly filed and the record is now complete.

Statement of the Case

The complaint in this case was filed on Complainant's behalf by the Illinois Department of Human Rights ("Department") on August 9, 1995. Respondent filed its verified answer on August 30, 1995 and a scheduling order was entered on October 4, 1995. A contentious period of discovery that continued at least until January, 1997 then followed. The first draft of the joint pre-hearing memorandum was served on Respondent and filed with the Commission on January 23, 1997, but Respondent indicated it intended to file a dispositive motion before the final version was filed by the parties. Respondent did file a Motion for Summary Decision on March 14, 1997 which was denied on August 18, 1999. There then followed a series of filings and counter-filings related to the joint pre-hearing memorandum, beginning with a version filed by Respondent on November 12, 1999. The final, executed version of the joint pre-hearing

memorandum was filed on December 8, 2000 and, in an order entered on December 11, 2000, the public hearing was scheduled to begin on April 4, 2001 as noted above. The matter is now ready for decision.

Findings of Fact

The following facts are based upon the record of the public hearing in this matter.

Factual assertions made at the public hearing, but not addressed in these findings, were determined to be unproven by a preponderance of the evidence or were otherwise immaterial to the issues at hand. Numbers one to 15 are those facts that were classified as “uncontested” by the parties in their joint pre-hearing memorandum, although they may be slightly edited here; these items are marked by an asterisk (*). Throughout this recommended order, citations to the public hearing transcript are indicated as “Tr. ###.” Complainant’s exhibits admitted into evidence are denoted “CX-#” and Respondent’s exhibits are denoted “RX-#.”

1. Respondent is an employer within the purview of the Illinois Human Rights Act.*

2. From March 12, 1990 until June 12, 1992, Complainant was employed by Respondent. *

3. Complainant was 55 years old at the time of her hire, and was employed by Respondent as the Director of Systems Development in the Information Systems Department. Complainant was 57 years old at the time of her discharge (date of birth: December 8, 1934).

Note: Complainant asserts that she was employed in the Information Systems Division. *

4. Complainant was responsible for directing Respondent’s Information Systems Department/Division which included the maintenance of the existing computer system. *

5. When Complainant was first employed by Respondent, Complainant reported to Marty Mutz, who at the time was Respondent's Vice-President of Information Systems Department/Division and Chief Information Officer. *

6. Complainant's 1990 performance evaluation showed that Complainant's performance was rated as "exceeds standards" by her previous supervisor, Mutz. *

7. Mutz's employment with Respondent ended in November, 1991. *

8. On November 25, 1991, Respondent hired Roger Brooks to replace Mutz as Vice-President of the Information Systems Department/Division and Chief Information Officer. Brooks was 50 years old at the time he was hired. *

9. Complainant, as well as other directors, managers and staff in the Information Systems Department/Division, then reported directly to Brooks. *

10. Brooks met with Complainant approximately once a week from January to June, 1992. *

11. Complainant was notified of her termination on June 12, 1992 and was terminated effective June 26, 1992. *

12. Upon notifying Complainant of her termination, Brooks told Complainant, among other things, that her subordinates had "lost confidence in her" and he wanted a "new coach for the team." *

13. Respondent informed Complainant that it had arranged outplacement assistance for her through a professional outplacement firm, Lee Hecht Harrison. *

14. At the time of Complainant's discharge, Brooks was 50 years old. *

15. On October 16, 1993, Complainant became employed by the Illinois State Police. *

16. Roger Brooks, the successor of Marty Mutz and the manager who was the decision-maker regarding the discharge of Complainant, started with Respondent in November, 1991, and was himself discharged in December, 1994.

17. In her first performance review, which covered the period of March, 1990 to October, 1990, Complainant was rated as “exceeds standards.” The review was signed by Marty Mutz and Robert Fleisher, the president of Respondent.

18. The second performance review of Complainant covered the period of November, 1990 through October, 1991. This review also rated Complainant as “exceeds standards” and was signed by Roger Brooks and Mr. Fleisher.

19. Beginning in December, 1991, Complainant met with Roger Brooks on a regular (usually weekly) basis to discuss the performance of the department she supervised. In the course of these meetings, as well as through his day-to-day observation of Complainant and her department, Mr. Brooks was able to form his own independent opinion of Complainant’s inability to address the chronic deficiencies of her department.

20. In early June, 1992, Mr. Brooks prepared a memorandum for Human Resources outlining his reasons for recommending the discharge of Complainant. Complainant’s performance was found to be unsatisfactory in the following areas: job knowledge and skill application; organizing and planning; initiative and creativity; and, leadership. Further, her performance was found to need improvement in the following areas: dependability; accuracy and error prevention; communication; customer awareness; and, problem solving and decision-making. RX-4.

21. No direct discrimination against Complainant by Respondent was established at the public hearing on this matter.

Conclusions of Law

1. Complainant is an “aggrieved party” and Respondent is an “employer” as those terms are defined by the Illinois Human Rights Act, 775 ILCS 5/1-103(B) and 5/2-101(B) respectively.
2. The Commission has jurisdiction over the parties and the subject matter of this action.
3. Respondent was Complainant’s employer for all periods of time relevant to the complaint.
4. Complainant established a *prima facie* case of age discrimination.
5. Respondent, through the testimony and written memorandum of Roger Brooks, articulated legitimate reasons supporting its decision to discharge Complainant.
6. Complainant did not establish by a preponderance of the evidence that the reasons asserted by Respondent were pretextual or that Respondent otherwise discharged her because of her age.
7. The charge and complaint in this matter should be dismissed with prejudice.

Discussion

Respondent is engaged in the business of moving goods from one place to another for both individual and commercial customers. At the time of the events relevant to this complaint, the company had recently been acquired by an international holding company based in the United Kingdom. When Complainant was first employed by Respondent, it was in the midst of a tumultuous, even chaotic, period in the history of the company. Faced with the high expectations of its new owner, it also was struggling to compete in an industry that was increasingly turning to computerized services for many aspects of its sales, planning, logistics and billing functions. It

was, or it at least perceived itself to be, significantly behind the industry leaders in these areas. Little patience was displayed toward Complainant, her predecessors or successors and their respective superiors in meeting the challenge of modernizing Respondent's information services. The senior executive who hired Complainant was fired less than two years later and his successor, who was the decision-maker regarding Complainant's discharge, was himself fired after a tenure of just over three years. Even during her relatively short tenure, there was a dizzying succession of decisions regarding information services that resulted in resetting priorities, extensive revisions of employee responsibilities, and the expansion and contraction of consultant services. It was in this environment that Complainant was employed, beginning on March 12, 1990.

The complaint in this case alleges "(t)hat Respondent subjected Complainant to discharge because of her age, 57, in violation of Section 2-102(A) of the (Illinois Human Rights) Act." Complaint, Paragraph Thirteen. When there is no direct evidence of discriminatory discharge by a respondent, as is true in this case, it is usual for the analysis of the evidence to proceed under the process described in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). This process requires the complainant to first establish a *prima facie* case, which can then be rebutted by the articulation (not proof) by the respondent of a lawful reason for the action taken. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 254-55 (1981). If this is done successfully, the complainant must then establish by a preponderance of the evidence that the reason advanced by respondent is merely a pretext for the alleged unlawful conduct. This method of proof has been adopted by the Commission and approved for use here by the Illinois Supreme Court. Zaderaka v. Illinois Human Rights Comm'n, 131 Ill.2d 172, 178, 545 N.E.2d 684, 137 Ill.Dec. 31 (1989).

The standard for establishing a *prima facie* case of unlawful discharge due to age discrimination is that the complainant must show that 1) the Complainant is a member of the protected class, here those over the age of 40; 2) Complainant was performing her job well enough to meet the employer's legitimate expectations; 3) she was discharged; and, 4) the employer sought a replacement for her. Illinois J. Livingston Co. v. Human Rights Comm'n, 302 Ill.App.3d 141, 153, 704 N.E.2d 797, 235 Ill.Dec. 224 (1st Dist. 1998). The first and third elements of the *prima facie* case are established by the uncontested facts submitted by the parties in the joint pre-hearing memorandum. Findings of Fact, #3 (Complainant was age 55 when her employment with Respondent commenced) and #11 (Respondent terminated Complainant's employment on June 12, 1992).

Evidence presented at the public hearing establishes the second element of the *prima facie* case for Complainant. At one time, it was necessary for a complainant to show that he or she was literally performing at or above the employer's standards at the time of the adverse employment action to establish this element of the *prima facie* case. However, this hurdle was lowered as a result of the Appellate Court decision in a 1995 Commission case. There it was decided that the performance issue "should not be an essential element of proving ... a *prima facie* Illinois Human Rights Act case." ISS International Service System, Inc. v. Human Rights Comm'n, 272 Ill.App.3d 969, 978, 651 N.E.2d 592, 209 Ill.Dec. 414 (1st Dist 1995). This approach was emphatically embraced by the Commission in Battieste and C.E. Niehoff & Company, Ill. H.R.C. Rep. (1989CF4075, November 14, 1995). In this case, Complainant's only two written performance reviews while employed by Respondent, and signed by her immediate supervisors and the company chief executive, were at an "exceeds standards" level. While Respondent attacks the validity of them because they were drafted by Complainant,

this fact is sufficient to establish this element of the *prima facie* case because, whoever drafted them, they were ratified freely by the requisite company executives. Finally, the proof at the public hearing also showed that Complainant's duties were immediately assumed in whole or significant part by Anthony Mattia. This establishes that Respondent "sought a replacement" for Complainant and completes her *prima facie* case

Once a complainant has established a *prima facie* case, the respondent is given the opportunity to articulate (not prove) a legitimate business reason for the adverse act against the complainant. Burdine, supra. Here, Respondent asserts that Complainant was "not meeting (Respondent's) legitimate performance expectations." Respondent's (Initial) Post-Hearing Brief, at 18. Testimony at the public hearing indicated that Complainant was unable to devise creative solutions to the problems facing her department, that her decision making was not timely and that she was unable to motivate her staff to perform adequately. Tr. 944. Further, the level of service provided by Complainant and her staff was insufficient to meet the needs of her internal customers. Tr. 1008. Two significant, long-term projects assigned to Complainant's department were not completed in a timely fashion. One, the so-called Rate Quote project, had to be completed by outside consultants and another, the IMT project, was eventually abandoned entirely. Tr. 1020-22. Problems with staff morale, upgrading equipment and allocation of staff resources were chronic and were never effectively addressed during Complainant's tenure. When all of these are considered, Respondent had more than adequate legitimate reasons for discharging Complainant. See also RX-4 (summarized at Findings of Fact, #21).

Once Respondent establishes a legitimate reason for the action taken, Complainant must show that the reason is pretextual in order to prevail. However, at this point, it is necessary to recall the business climate and internal environment in which the events of Complainant's tenure

with Respondent occurred. In short, Respondent was under severe competitive pressure to modernize and streamline all of its functions, including those relating to information services. This resulted in an internal environment fueled by fear, uncertainty and frustration that left virtually no margin for any level of performance other than heroic. It can be argued that this combination of factors led to a long series of strategic, tactical and personnel decisions that, taken as a whole, can be fairly characterized as inconsistent or hasty when compared to normal business practices. Among these decisions is that to discharge Complainant from her employment. Whether or not her discharge can be defined as consistent with the highest principles of business decision-making, however, it cannot be seen as motivated by Complainant's age.

The precedents of the Commission amply demonstrate the principle that the Commission will not substitute its judgment for the business decisions made by an employer, even if those decisions do not meet the highest standards of business practice. Daugherty and Dewitt County Sheriff's Dept., Ill. H.R.C. Rep. (1998SN0144, April 3, 2002); Gustafson and American Health Care Corp. (d/b/a Cenco Americana Nursing Center), 20 Ill. H.R.C. Rep. 85 (1985).

However, Complainant alleges that the reasons advanced by Respondent are pretextual and that the unlawful consideration of age is the real reason that Complainant was discharged. In support of this contention, she argues that Respondent espoused a policy of "going young" in its executive corps, that Complainant was replaced by a younger person and that the reasons stated by the decision-maker, Roger Brooks, are a convenient pretextual fabrication. Complainant testified that before she was hired, Dorothy Ragsdale from Human Resources told her that Respondent was a "young company" and that the senior management was "young." Tr. 534. Ms. Ragsdale denied making such statements to Complainant in her own testimony (Tr. 1069), but

even if the statements were made, they do not constitute evidence of age discrimination. It is true that the Commission once found that statements of this kind can establish a bias against older employees. Zappala and Hartmarx Specialty Stores, Inc., Ill. H.R.C. Rep. (1989CA1110, February 28, 1994). However, the circumstances of that case are easily distinguishable from those presented by the alleged statements attributed to Ms. Ragsdale. In Zappala, the CEO of Hartmarx “often and repeatedly” made the discriminatory statements. Further, they were memorialized in both the company annual report and in an interview with the CEO that was published in the Chicago Tribune. The Commission found it significant that the statements were made by the CEO in public forums and therefore set the tone for actions throughout the company. Here, Ms. Ragsdale did not set policy for the company and the alleged statements were made, if they were made at all, while Complainant was still a candidate for employment in the position for which she was ultimately hired.

Complainant’s job responsibilities were assumed by Tony Mattia after her discharge. At that time, Mr. Mattia was 40 years old and 17 years younger than Complainant. Even though Mr. Mattia was also in the protected group, the age disparity still gives rise to the possibility of age discrimination, at least to establish the *prima facie* case of a complainant. Anderson v. Cook County’s Oak Forest Hospital, 314 Ill.App.3d 35, 731 N.E.2d 371, 246 Ill.Dec. 843 (1st Dist. 2000). Application of this standard does not end the inquiry, however. As with the other elements of a *prima facie* case, Respondent may still interject a legitimate reason for the discharge to overcome it (see above).

Finally, while Complainant strongly argues that the testimony of Roger Brooks is not credible, I found Brooks, who not only is no longer employed by Respondent, but whose own discharge occurred during the same regime of chaos that is relevant to Complainant’s discharge,

to be credible, candid and forceful in describing Complainant's inability to meet the performance expectations of Respondent. It has already been noted that this perception of Complainant's deficiencies was not necessarily fair or fully supportable under the standard of best business practices, but that it was consistent with the general dysfunction of Respondent's corporate environment at that time. Finally, the evaluation of Complainant by Brooks was not motivated by a discriminatory animus based on her age.

In the absence of a preponderance of the evidence that the decision to terminate Complainant's employment was motivated by discriminatory animus based on her age, it must be concluded that Respondent is not guilty of violating the Human Rights Act as alleged in the charge and complaint. Therefore, it is recommended that the complaint be dismissed with prejudice.

Recommendation

It is recommended that the complaint and underlying charge in this matter be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

ENTERED:

April 30, 2003

BY: _____

DAVID J. BRENT
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

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